

DINYEYEA CORP.

IBLA 84-707

Decided January 8, 1986

Appeal from a decision of the Alaska State Office, Bureau of Land Management, dismissing Dinyea Corporation's protest to State selection applications, F-44205, et al.

Affirmed.

1. Alaska: Statehood Act -- Alaska National Interest Lands Conservation Act: Generally -- Conveyances: Generally -- State Selections

The subsistence protection provisions of the Alaska National Interest Lands Conservation Act may not prohibit or impair land selections made pursuant to the Alaska Statehood Act of July 7, 1958.

2. Withdrawals and Reservations: Revocation and Restoration

The Board of Land Appeals does not have the authority to modify the terms of a properly issued public land order selectively revoking a withdrawal.

APPEARANCES: Dave Lacey, General Manager, Dinyea Corporation, and Harold W. Simon, Chief, Stevens Village Council, for appellant; William C. Williams, President, Tanana Chiefs Conference, Inc.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Dinyea Corporation (Dinyea), an Alaska Native Corporation, has appealed from the May 24, 1984, decision of the Alaska State Office, Bureau of Land Management (BLM), which dismissed Dinyea's protest of the proposed conveyance of land in T. 12 N., Rs. 9 through 11 W. and T. 13. N., Rs. 10 and 12 W., Fairbanks Meridian, Alaska, to the State of Alaska pursuant to State selections. The Chief of the Tribal Council of the Native Village of Stevens Village, Alaska, joined in the notice of appeal. 1/

1/ The President, Tanana Chiefs Conference, Inc., has entered an appearance supporting Dinyea, but specifying different lands: Ts. 11 and 12 N., R. 10 W., Ts. 11 through 13 N., R. 10 W., and Ts. 11 through 13 N., R. 11 W., Fairbanks Meridian.

On December 28, 1971, a portion of the disputed lands were withdrawn by Public Land Order (PLO) 5150, (36 FR 25410-11 (Dec. 28, 1971), as amended) to provide a utility corridor. Various sections within the disputed townships were also designated for an oil or gas pipeline by PLO 5404, 39 FR 1593 (Jan. 11, 1974).

On November 14, 1978, the State of Alaska filed State selection applications for the five disputed townships pursuant to section 6(b) of the Alaska Statehood Act of July 7, 1958, 72 Stat. 339, 340, as amended. ^{2/} On October 29 and December 9, 1981, the State reasserted and amended (top filed) these five selection applications, pursuant to section 906(e) of the Alaska National Interest Lands Conservation Act (ANILCA), 94 Stat. 2371, 2439, 43 U.S.C. § 1601 note. On June 24, 1982, BLM approved for conveyance approximately 73,913 acres of the surface estate selected by Dinyea on November 11, 1974, pursuant to section 12(a) of the Alaska Native Claims Settlement Act (ANCSA). 43 U.S.C. § 1611 as amended (1982). Portions of T. 12 N., R. 9 W., flanking the Yukon River were included in this approval. ^{3/} Alaska State selection application F-44205 was rejected as to the approved acreage in that township. On November 3, 1982, BLM rejected State selection applications F-44206 and F-44207 because the lands described in those applications had been withdrawn for a utility corridor by PLO 5150.

On January 19, 1984, BLM issued a decision directing the State of Alaska to publish notice of the selection applications the State had filed pursuant to section 6(b) of the Alaska Statehood Act and subsequently refiled pursuant to section 906(e) of ANILCA. In March and April 1984, the State of Alaska published notice of selection applications for lands including the five townships at issue. BLM then published a partial revocation of PLO 5150, as amended, as to the lands described in the notice. PLO 6533, 49 FR 20001-2 (May 11, 1984). The notice of revocation stated that certain lands in T. 12 N., Rs. 9 through 11 W., Fairbanks Meridian, and other lands

<u>2/ Selection Application</u>	<u>Fairbanks Meridian</u>
F-44205	T. 12 N., R. 9 W.
F-44206	T. 12 N., R. 10 W.
F-44207	T. 12 N., R. 11 W.
F-44210	T. 13 N., R. 10 W.
F-44212	T. 13 N., R. 12 W.

3/ The following portions of F-44205 were conveyed to Dinyea:
T. 12 N., R. 9 W.

Secs. 5 to 8, inclusive;

Sec. 9, excluding Native allotment F-14132 Parcel B;

Secs. 10 and 11;

Sec. 13, excluding Native allotments F-14799,

F-14132 Parcel A, and F-13355;

Sec. 14, excluding Native allotments F-13355,

F-026055, and F-026049 Parcel A;

Sec. 15, excluding Native allotments F-026055

and F-14132 Parcel C;

Sec. 16, excluding Native allotment F-14132 Parcel B.

Containing approximately 4,722 acres.

were being made available for selection by the State of Alaska, but would remain "closed to all other forms of appropriation and disposition under the public land laws, including mineral leasing, except for location and entry for metalliferous minerals under the mining laws." ^{4/} This partial revocation order was signed by Assistant Secretary Garrey E. Carruthers.

On December 27, 1983, appellant filed a protest to an amendment to the Corridor Management Framework Plan (MFP) permitting certain pipeline corridor lands to be selected by the State. The Director of BLM denied this first protest on February 28, 1984, stating:

You indicated that the Dinyea Corporation is concerned that State selection of certain lands in the corridor "... will ultimately result in more outsiders coming in, and resulting in the final destruction of the already fragile economy. This could have a genocidal affect upon the tribe." You requested that we modify the Public Land Order draft to retain selected townships.

The Bureau of Land Management (BLM), is also concerned about the subsistence lifestyle of the people of Stevens Village. However, we do not believe that making these lands available for State selection will necessarily result in the effects which you suggest. There are several reasons why we believe that the subsistence lifestyle of the tribe will be respected and protected. These reasons are:

1. The State of Alaska must comply with all State statutes and regulations as well as those of the Alaska National Interest Lands Conservation Act (ANILCA) governing subsistence;
2. The State of Alaska has indicated that the corridor will be managed to prevent the creation of new third party interests in the inner corridor, and the lands in the outer corridor would be open to multiple resource management under State law with the completion of detailed management plans to help resolve differences between statewide and local concerns. Enclosed is a copy of a letter dated June 28, 1982, from the Commissioner of the Department of National [sic] Resources, explaining this intent;
3. Lands adjacent to the Corridor are already under State management and the BLM feels that the remaining limited holdings would best be managed by a single landowner.

It is our hope that the State of Alaska and the Native Village of Stevens will be able to realize their multiple objectives for the future use of the affected lands.

^{4/} The notice does not indicate that lands in T. 13 N., Rs. 10 and 12 W., were made available to the State.

After reviewing your protest and the procedures followed by the Alaska State Director and the Fairbanks District Manager, we conclude that they followed the appropriate planning procedures, laws, regulations, policies, and resource considerations in developing the amendment to the Corridor MFP. In addition, they have provided ample opportunity for public comment and have considered that comment prior to making the decision on the MFP amendment.

I hereby uphold the decision of the State Director. This is the final decision of the Department of the Interior on your protest.

Sincerely,
/s/ Robert F. Burford
Director

On April 13, 1984, BLM received an April 9, 1984, letter in which Dinyea objected to prospective State ownership of the five specified townships in the utility corridor. This protest was filed in response to the legal notices published by the State. Dinyea stated that the people of Stevens Village attempted to claim this land four times but their efforts were thwarted. Dinyea found it unjust to allow the State of Alaska to select lands withdrawn from village selection. Dinyea objected to the prospect of State land disposal programs after transfer to the State, claiming the likelihood of severe impacts on the land, the wildlife, and particularly the people and their way of life. Dinyea stated its preference for continued Federal preservation of these lands. BLM denied this protest in the decision on appeal.

The BLM decision stated that ownership by the State of Alaska would not be detrimental to the local subsistence economy, because Alaska is bound by its own statutes and by Title VIII of ANILCA, 16 U.S.C. §§ 3111-3126 (1982) (Subsistence Management and Use). BLM also said the State would not permit third-party interests in the inner part of the corridor. The State would open outer corridor lands "to multiple resource management under State law after detailed management plans to help resolve differences between local and statewide concerns have been completed." BLM added that the State already owned adjoining lands and, as a single landowner, it could best manage the area for the benefit of all Alaskans. BLM also stated: "[A]ll claims against the United States, the State and all other persons based on claims of aboriginal right, title, use or occupancy of land or water areas in Alaska were extinguished by Section 4 of the Alaska Native Claims Settlement Act." 43 U.S.C. § 1603 (1982).

On appeal appellant again argues that State selection of corridor land would bring an influx of outsiders who would disrupt the fragile local economy by competing for subsistence resources. Appellant claims BLM can best ensure a confirmation of traditional use by the Athabascan people living in and near Stevens Village. Appellant alleges the lands were made available for State selection without proper input from the tribe or from Dinyea, the largest private landowner in the area. Dinyea also claims it is unfair to

open the corridor for State selections only, after the withdrawal had denied Dinyea the opportunity to select the land. Dinyea asserts it should have jurisdiction over the land and projected State multiple use is incompatible with subsistence.

[1] In support of its appeal, Dinyea points to Congressional findings and statements of policy, found in Title VIII of ANILCA, 16 U.S.C. §§ 3111, 3112 (1982), 5/ which emphasize the need to minimize the impact of land management on subsistence activities. However, section 802(3) of ANILCA, 16 U.S.C. § 3112 (1982), also states:

(3) except as otherwise provided by this Act or other Federal laws, Federal land managing agencies, in managing subsistence activities on the public lands and in protecting the continued viability of all wild renewable resources in Alaska, shall cooperate with adjacent landowners and land managers, including Native Corporations, appropriate State and Federal agencies, and other nations.

In addition, section 810 (c) of ANILCA, 16 U.S.C. § 3120(c), provides: "(c) Nothing herein shall be construed to prohibit or impair the ability of the State or any Native Corporation to make land selections and receive land conveyances pursuant to the Alaska Statehood Act or the Alaska Native Claims Settlement Act." This statutory provision clearly demonstrates Congressional intent to provide for unimpeded selection of land pursuant to the Alaska Statehood Act.

[2] Of greater importance, however, this Board does not have the authority to modify the terms of a revocation of a withdrawal when the revocation is issued by an Assistant Secretary. As stated in Vincent Barnard, 66 IBLA 100, 105 (1982), "[u]nder 43 U.S.C. § 1714(a) [(1982) of the Federal Land Policy and Management Act of 1976], a withdrawal can be revoked or modified only by an individual in the Office of the Secretary who has been appointed by the President with the advice and consent of the Senate."

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Alaska State Office dismissing this protest is affirmed.

We concur:

R. W. Mullen
Administrative Judge

Will A. Irwin
Administrative Judge

Franklin D. Arness
Administrative Judge

5/ See also 16 U.S.C. § 3101(c) (1982).

